

HOUSE No. 4546

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, DECEMBER 17, 2012.

The committee on Ways and Means, to whom was referred the Bill to regulate real estate appraisal management companies (House, No. 4117), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4546).

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 4546

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to regulate real estate appraisal management companies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 13 of the General Laws is hereby amended by striking out section 92 and
2 inserting in place thereof the following section:-

3 Section 92. (a) There is hereby established a board of real estate appraisers which shall consist of
4 9 members to be appointed by the governor: 1 of whom shall be a member of the general public,
5 in accordance with the provisions of section 9B; 1 of whom shall be a member of the banking
6 industry; 1 of whom shall be a licensed real estate broker; 1 of whom shall represent an appraisal
7 management company; and 5 of whom shall be real estate appraisers. Each real estate appraiser
8 who is a member of the board shall be licensed or certified pursuant to sections 173 to 195,
9 inclusive, of chapter 112.

10 (b) The term of each appointed member shall be 3 years. Upon expiration of their terms,
11 members of the board shall continue to hold office until the appointment and qualification of
12 their successors. No person shall serve as a member of the board for more than 2 consecutive
13 terms. The governor may remove a member for cause.

(c) Each member of the board shall be paid for expenses actually incurred in the performance of official duties.

(d) The board shall annually elect a chairperson from among its members. The director of the department of professional licensure, with approval of the board, shall appoint an executive secretary to serve the board. The department of professional licensure shall employ such other clerical and technical assistants as may be necessary to discharge the official duties of the board.

(e) The board shall hold at least 6 meetings each year and may hold special meetings as required at a time and place determined by the board.

SECTION 2. Chapter 112 of the General Laws is hereby amended by inserting after section 263 the following 14 sections:-

Section 264. (a) As used in sections 264 to 277, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:-

“Applicant”, a person who applies to be registered as an appraisal management company in the commonwealth.

“Appraisal management company”, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling, or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or

more nationally, excluding those appraisers who do not provide appraisal services for covered transactions, within a given year to

- (i) recruit, select, and retain appraisers;
- (ii) contract with licensed and certified appraisers to perform appraisal assignments;
- (iii) manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or
- (iv) review and verify the work of appraisers.

“Appraisal practice”, valuation services performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or appraisal consulting.

“Appraisal review”, the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment related to the appraiser’s data collection, analysis, opinions, conclusions, opinion of value, or compliance with the Uniform Standards of Professional Appraisal Practice. “Appraisal review” shall not include: (i) a general examination for grammatical, typographical or similar errors, or (ii) a general examination for completeness including regulatory or client requirements as specified in an agreement process that does not communicate an opinion of value.

“Appraisal services”, the services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources including, but not limited to multiple listing services, tax assessment records and public

55 land records, developing and rendering an opinion of value, and preparing and submitting the
56 appraisal report.

57 “Board”, the board of registration of real estate appraisers under section 92 of chapter 13.

58 “Controlling person”, (1) an officer or director of an appraisal management company, or an
59 individual who holds a 10 per cent or greater ownership interest in an appraisal management
60 company; (2) an individual employed, appointed, or authorized by an appraisal management
61 company that has the authority to enter into a contractual relationship with clients for the
62 performance of appraisal services and that has the authority to enter into agreements with
63 independent appraisers for the completion of appraisals; or (3) an individual who possesses the
64 power to direct or cause the direction of the management or policies of an appraisal management
65 company.

66 “Covered transaction”, an extension of consumer credit that is or will be secured by the
67 consumer's principal dwelling.

68 “Dwelling”, a residential structure that contains 1 to 4 units, whether or not that structure is
69 attached to real property, that includes an individual condominium unit, cooperative unit, mobile
70 home, and trailer, if it is used as the consumer’s principal residence.

71 “Employee”, an individual who has an employment relationship with a person acknowledged by
72 both the individual and the person, and who is treated as an employee for purposes of
73 compliance with federal income tax laws.

“Employee in Charge”, a designated employee of the appraisal management company, who is a state certified appraiser in at least 1 state, with the responsibilities and obligations to the board as set forth in section 269.

“Fee Appraiser”, (i) a natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or (ii) an organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing the appraisals and is not subject to section 1124 of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989. A “fee appraiser”, as defined in clause (i), shall be exempt from the provisions of section 148B of chapter 149.

“Person”, an individual, sole proprietorship, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

“Registrant”, a real estate appraisal management company registered under sections 264 to 277.

“Valuation Services”, services pertaining to all aspects of property value

(b) The definitions contained in section 173 of chapter 112 shall apply.

Section 265. (a) It shall be unlawful for a person to directly or indirectly engage, or attempt to engage, in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first being registered by

the board under the provisions of sections 264 to 277, regardless of the person's use of the term "appraisal management company", "mortgage technology company", or any other name.

(b) The provisions of sections 264 to 277 shall not apply to:

(i) An agency of the federal government or any state or municipal government;

(ii) An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency provided the appraisal management company is in compliance with section 1124 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 and any rules promulgated pursuant to the authority granted in said section 1124; or

(iii) A licensed real estate broker performing activities in accordance with section 174B; provided, however, that an exempt person does not include a real estate broker who receives compensation of any kind in connection with the referral or placement of an appraisal assignment.

(c) A fee appraiser may not perform appraisal services for real property located in the commonwealth for an appraisal management company that is not registered under sections 264 to 277 unless exempt from licensing as provided for in this section

Section 266. The board shall have the authority to adopt rules and regulations that are reasonable and necessary to implement, administer, and enforce the provisions of sections 264 to 277.

Section 267. (a) A person desiring to be registered as an appraisal management company in the commonwealth shall make written application to the board on forms prescribed by the board

115 setting forth the applicant's qualifications for registration. The application shall be accompanied
116 by the applicable fee as determined annually by the secretary of administration and finance
117 pursuant to section 3B of chapter 7 and any other information the board deems necessary
118 pursuant to rules and regulations adopted by the board. Upon receipt of a completed application
119 and set fee the board shall determine that each person who owns more than 10% of an applicant
120 appraisal management company is of good moral character. The board shall then issue to the
121 applicant a certificate of registration authorizing the applicant to act as a real estate appraisal
122 management company in the commonwealth.

123 (b) An application for registration shall include the following certifications from the
124 applicant:

125 (i) A certification that the applicant has a system and process in place to verify that a
126 person being added to the appraiser panel of the appraisal management company for appraisal
127 assignments on real property located in the commonwealth holds a license or certification in
128 good standing in the commonwealth issued pursuant to this chapter;

129 (ii) A certification that the applicant has a system in place to review the work of all fee
130 appraisers that are performing real estate appraisal services for the appraisal management
131 company on a periodic basis to confirm that the real estate appraisal services are being conducted
132 in accordance with the Uniform Standards of Professional Appraisal Practice; and

133 (iii) A certification that the applicant maintains a detailed record of each service request
134 that it receives and the fee appraiser that performs the residential real estate appraisal services for
135 the appraisal management company.

(c) A person who, directly or indirectly owns more than 10 per cent of an applicant for registration, or any officer, controlling person, employee in charge or managing principal of an applicant for registration, who has had a license or certificate to act as an appraiser or to engage in any activity related to the transfer of real property refused, denied, canceled or revoked in the commonwealth or in any other state, whether on a temporary or permanent basis or, who is not of good moral character as determined by the board, shall not be eligible for registration.

(d) Each applicant for registration shall submit the name and address of the applicant's registered agent located in the commonwealth.

(e) A registrant having a good faith belief that a real estate appraiser licensed in the commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in unethical conduct shall promptly file a complaint with the board.

Section 268. An appraisal management company applying to the board for registration in the commonwealth shall designate 1 controlling person that shall be the main contact for all communication between the board and the appraisal management company. The controlling person may also be designated the employee in charge.

Section 269. In order to serve as the employee in charge for a registered appraisal management company, a designee shall, in addition to continually holding a valid license issued by a state appraiser licensing authority as a state certified appraiser:

(1) not have had a license to practice as an appraiser or to engage in any activity related to the transfer of real property refused, denied, canceled or revoked in the commonwealth or in any other state;

(2) be of good moral character;

(3) submit to a state background investigation; and

(4) shall be responsible for:

(i) management of the process of selecting appraisers for the performance of real estate appraisal services;

(ii) management of the process of conducting appraisal reviews. An employee of an appraisal management company or a contractor working on behalf of such company who has any involvement in the performance of an appraisal review of completed appraisals of real property located in the commonwealth shall be licensed or certified in the commonwealth and in good standing pursuant to the provisions of sections 264 to 277; and.

(iii) maintaining required documentation as part of the board file.

Section 270. An appraisal management company shall file a form with the board indicating the appraisal management company's designation of controlling person and employee in charge and the individual's acceptance of the responsibility. An appraisal management company shall notify the board of any change in the appraisal management company's controlling person or employee in charge and shall have 30 days from the date a vacancy occurs in either position to designate a temporary or permanent replacement and, in the event a temporary designation is made, 90 days to appoint a permanent replacement. An appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to section 274 until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be a certified general

178 or certified residential appraiser and shall be considered the managing principal for purposes of
179 sections 264 to 277 unless another managing principal is designated.

180 Section 271. The following fees shall be determined annually by the secretary of administration
181 and finance under the provision of section 3B of chapter 7 and shall be collected by the board:

182 (a) application fee; (b) initial license fee; (c) annual renewal fee; (d) change in controlling person
183 or employee in charge; and (e) late renewal fee.

184 Section 272. In addition to the filing fee, each applicant for registration shall post with the board
185 and maintain a surety bond in the amount of \$20,000. The bond shall:

186 (i) be in the form prescribed by regulation of the board; and (ii) accrue to the
187 commonwealth for the benefit of a claimant against the registrant to secure the faithful
188 performance of the registrant's obligations under sections 264 to 277.

189 The aggregate liability of the surety shall not exceed the principal sum of the bond. A
190 party having a claim against the registrant may bring suit directly on the surety bond, or the
191 board may bring suit on behalf of the party having a claim against the registrant. A deposit of
192 cash or security may be accepted in lieu of the surety bond. A claim reducing the face amount of
193 the bond shall be annually restored upon renewal of the registrant's registration.

194 Section 273. (a) No employee, director, officer, managing principal or agent of an appraisal
195 management company or any other third party acting as joint venture partner or independent
196 contractor shall influence or attempt to influence the development, reporting, result, or review of
197 a real estate appraisal through coercion, extortion, collusion, compensation, inducement,
198 intimidation, bribery, or in any other manner, including:

199 (1) withholding or threatening to withhold timely payment for a real estate
200 appraisal report except in cases of breach of contract or substandard performance of services;

201 (2) withholding or threatening to withhold future business from a real estate
202 appraiser or demoting or terminating or threatening to demote or terminate a real estate
203 appraiser;

204 (3) expressly or impliedly promising future business, promotions, or increased
205 compensation for a real estate appraiser;

206 (4) conditioning the ordering of a real estate appraisal report or the payment of a
207 real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached
208 or on a preliminary estimate requested from a real estate appraiser;

209 (5) requesting that a real estate appraiser provide an estimated, predetermined, or
210 desired valuation in a real estate appraisal report or provide estimated values or comparable sales
211 at any time before the appraiser's completion of the appraisal report;

212 (6) providing to a real estate appraiser an anticipated, estimated, encouraged, or
213 desired value for a subject property or a proposed or targeted amount to be loaned to the
214 borrower; provided, however, a real estate appraiser should be provided with a copy of the sales
215 contract for purchase transactions, if available;

216 (7) providing to a real estate appraiser, or any entity or person related to the
217 appraiser, stock or other financial or non-financial benefits;

218 (8) allowing the removal of a real estate appraiser from a list of qualified
219 appraisers used by any entity without prior written notice stating the reason for removal to the

appraiser. The notice shall include written evidence if the appraiser is removed from the list for illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or licensing standards of the commonwealth;

(9) any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality; or

(10) requesting or requiring a real estate appraiser to collect a fee from, or be compensated by, the borrower, homeowner, real estate agent, mortgage broker or any other third party in the provision of real estate appraisal services.

(b) No employee, director, officer, managing principal or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall:

(1) alter, modify, or otherwise change a completed appraisal report submitted by a fee appraiser without the appraiser's written knowledge and consent;

(2) alter, modify, or otherwise change a completed appraisal report submitted by a fee appraiser and shall, in all cases, transmit a "true and exact copy" to the client and any intended users;

(3) use an appraisal report submitted by a fee appraiser for any other transaction;

(4) require a fee appraiser to sign any indemnification agreement that would require the fee appraiser to defend and hold harmless the appraisal management company or any

of its agents, employees, or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the fee appraiser;

(5) require a fee appraiser to provide the company with the appraiser's digital signature or seal;

(6) prohibit a fee appraiser from recording the fee the fee appraiser was paid for the performance of an appraisal assignment within the body of the appraisal report;

(7) require a fee appraiser to accept an appraisal assignment if the fee appraiser, in the fee appraiser's own independent professional judgment believes, (i) the fee appraiser does not have the necessary expertise for the assignment or knowledge of the geographic area; or (ii) that the time frame does not allow the appraiser the ability to meet all of the fee appraiser's relevant legal or professional obligations, and the fee appraiser has communicated such belief to the appraisal management company; and

(8) knowingly fail to compensate fee appraisers at a rate that is customary and reasonable for appraisal services in the market area of the property being appraised, consistent with section 129E of the Truth in Lending Act and regulations promulgated thereunder.

(c) Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a fee appraiser:

(1) consider additional appropriate material property information;

(2) provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion; or

(3) correct errors in the real estate appraisal report.

(d) An appraisal management company shall not refuse to assign requests or orders for appraisals or reduce the number of assignments or otherwise penalize a fee appraiser who does not accept an assignment or order in accordance with clause (7) of subsection (b), except that nothing in this section shall require an appraisal management company to offer future appraisal assignments of a particular nature or type to a fee appraiser who previously indicated a lack of the necessary expertise or geographic knowledge for such assignments, except in the case where the fee appraiser subsequently demonstrates, to the satisfaction of the appraisal management company, that the fee appraiser has gained the required experience or geographic knowledge to competently complete the assignments.

Section 274. (a) The board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the board determines that an applicant, registrant, or any partner, member, manager, officer, director, managing principal, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

(1) filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact;

(2) violated or failed to comply with any provision of sections 264 to 277 or any rules and regulations adopted by the board;

(3) been convicted of any felony or, within the past 5 years, been convicted of any misdemeanor involving any activity related to the transfer of real property, including, but not limited to, mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing;

(4) been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business;

(5) been the subject of an order of the board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser;

(6) acted as an appraisal management company while not properly licensed by the board;

(7) structured an appraisal assignment or a contract with a fee appraiser for the purpose of evading the provisions of sections 264 to 277; or

(8) failed to pay the proper filing or renewal fee under sections 264 to 277.

(b) The board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, managing principal, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of sections 264 to 277. The civil penalty shall not exceed \$10,000 for each violation.

(c) In addition to other powers under sections 264 to 277, upon finding that any action of a person is in violation of sections 264 to 277, the board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the board's order, the person shall be subject to a civil penalty of not more than \$25,000 for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the board.

(d) Unless otherwise provided, all actions and hearings under sections 264 to 277 shall be governed by chapter 30A.

(e) If the board has reasonable grounds to believe that an appraisal management company has violated the provisions of sections 264 to 277 or that facts exist that would be the basis for an order against an appraisal management company, the board may at any time, either personally or by a person duly designated by the board, investigate or examine the books, accounts, records, and files of any registrant or other person relating to the complaint or matter under investigation.

(f) The board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the board in any hearing, investigation, inquiry, or other proceeding conducted by the board. Upon the production of any papers, records, or documents, the board shall have the power to authorize true copies of the papers, records, or documents to be substituted in the permanent record of the matter in which the papers, records, or documents shall have been introduced in evidence.

Section 275. (a) The board shall maintain a list of all applicants for registration under sections 264 to 277 which includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(c) Every registered appraisal management company shall maintain the records related to services provided by the appraisal management company as prescribed in regulations adopted by the board. All records shall be preserved for 5 years unless the board, by regulation, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

Section 276. The board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of sections 264 to 277 or regulations adopted by the board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the board under sections 264 to 277.

Section 277. (a) The board shall have the authority to conduct investigations and examinations for:

(1) purposes of initial registration, registration renewal, registration suspension, registration conditioning, registration revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter. The board shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to: (i) criminal, civil and administrative history information, including non-conviction data as specified in applicable provisions of the General Laws; and (ii) any other documents, information or evidence the board deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence; and

(2) the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the board may review, investigate, or examine any licensee, individual or person subject to this chapter, in order to carry out the purposes of this chapter.

(b) If an applicant, registrant or managing principal's criminal history record check reveals 1 or more convictions, the conviction shall not automatically bar registration, provided the conviction is not related to the transfer of real property. The board shall consider all of the following factors regarding the conviction:

(1) the level of seriousness of the crime;

(2) the date of the crime;

(3) the age of the person at the time of the conviction;

(4) the circumstances surrounding the commission of the crime, if known;

366 (5) the nexus between the criminal conduct of the person and the job duties of the
367 position to be filled; and

368 (6) the person's prison, jail, probation, parole, rehabilitation, and employment
369 records since the date the crime was committed.